

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 202004250	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 8:30 PM	Location of Incident: § 87(2)(b) 76th Precinct stationhouse	Precinct: 76	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 06/14/2020 11:40 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 06/14/2020 11:40 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Kelsey Mahne	10585	960849	076 PCT
2. POM Albert Germosen	18292	964015	076 PCT
3. POM Billy Gomez	01518	949041	076 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Lauren Maragni	14565	956879	076 PCT
2. POM John Asanesco	16398	952427	076 PCT
3. LT James Tomasulo	00000	945329	076 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Albert Germosen	Abuse: At § 87(2)(b) Police Officer Albert Germosen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(g)
B.POM Billy Gomez	Abuse: At § 87(2)(b) Police Officer Billy Gomez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(g)
C.POM Billy Gomez	Abuse: Police Officer Billy Gomez questioned § 87(2)(b)	§ 87(2)(g)
D.POM Billy Gomez	Abuse: Police Officer Billy Gomez frisked § 87(2)(b)	§ 87(2)(g)
E.POM Billy Gomez	Abuse: At § 87(2)(b) Police Officer Billy Gomez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(g)
F.POF Kelsey Mahne	Abuse: At § 87(2)(b) Police Officer Kelsey Mahne searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(g)
G.POM Albert Germosen	Abuse: At § 87(2)(b) Police Officer Albert Germosen threatened to arrest § 87(2)(b)	§ 87(2)(g)
H.POM Albert Germosen	Discourtesy: At the 76th Precinct stationhouse, Police Officer Albert Germosen spoke discourteously to § 87(2)(b)	§ 87(2)(g)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

## Case Summary

On June 14, 2020, § 87(2)(b) submitted this complaint with the CCRB online.

At approximately 8:30 p.m. on June 4, 2020, in the vicinity of § 87(2)(b) § 87(2)(b) was in her second-floor apartment and observed a vehicle with two occupants, § 87(2)(b) and § 87(2)(b) pulled over. PO Billy Gomez and PO Albert Germosen from the 76<sup>th</sup> Precinct stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations A and B: Abuse of Authority – § 87(2)(g)**). PO Gomez was standing at the driver side window and asked § 87(2)(b) if there was anything in the vehicle that should not be (**Allegation C: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) exited the vehicle and PO Gomez frisked him (**Allegation D: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) exited the vehicle and both she and § 87(2)(b) stood at the rear of the vehicle with PO Germosen. PO Gomez searched the vehicle (**Allegation E: Abuse of Authority – § 87(2)(g)**). PO Gomez recovered a knife and marijuana. PO Kelsey Mahne of the 76<sup>th</sup> Precinct arrived on scene and searched the vehicle (**Allegation F: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) was placed in handcuffs and placed in PO Gomez's and PO Germosen's patrol vehicle. In the patrol vehicle PO Germosen told § 87(2)(b) that if he was not quiet, he would be arrested (**Allegation G: Abuse of Authority – § 87(2)(g)**). At the 76<sup>th</sup> Precinct stationhouse, PO Germosen told § 87(2)(b) "You make a fucking phone call in there," (**Allegation H: Discourtesy – § 87(2)(g)**). § 87(2)(b) was released from the stationhouse with a summons for the knife, and § 87(2)(b) was issued a summons for the marijuana.

§ 87(2)(g), § 87(4-b)

Received two cellphone videos from § 87(2)(b) (Board Reviews 01 and 02). Received seven BWC videos from the NYPD (Board Review 03).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: At § 87(2)(b) Police Officer Albert Germosen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**  
**Allegation (B) Abuse of Authority: At § 87(2)(b) Police Officer Billy Gomez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that at approximately 8:30 p.m. PO Gomez and PO Germosen stopped the vehicle which § 87(2)(b) was driving. § 87(2)(b) was seated in the passenger seat of the vehicle. No other individual was in the vehicle. § 87(2)(b) was not issued any summons for a traffic violation or any summons for any kind of vehicle related violation.

§ 87(2)(b) stated (Board Review 05) that she was in her apartment located on the second floor of a building that overlooked the intersection of § 87(2)(b) Brooklyn. From the window, § 87(2)(b) observed a white sedan stopped on the side of the street, and a marked patrol vehicle behind it stopped in the middle of the intersection. PO Gomez and PO Germosen approached the white sedan. § 87(2)(b) did not observe the white vehicle in motion. § 87(2)(b) did not know why PO Gomez and PO Germosen stopped the white vehicle.

Contact attempts were exhausted to both § 87(2)(b) and § 87(2)(b). Neither provided statements to the CCRB.

PO Gomez's and PO Germosen's memo books (Board Review 06) note that they performed a vehicle stop at approximately 8:42 p.m., but neither memo book note any specific reason for the stop. PO Gomez and PO Germosen stated (Board Reviews 07 and 08) that they were on patrol and observed § 87(2)(b) commit a traffic infraction. PO Germosen was not able to recall what the infraction was. PO Gomez stated that § 87(2)(b) had turned left onto Baltic Street without using his turn signal. PO Gomez made the determination to pull over § 87(2)(b). § 87(2)(b) was pulled over because of the traffic infraction. Later at the 76<sup>th</sup> Precinct stationhouse, while § 87(2)(b) was in the holding cell, PO Gomez and PO Germosen were instructed to don their riot gear and assist with the Black Lives Matter and anti-police brutality protests. Because PO Gomez was issued this command, he used his discretion and did not issue § 87(2)(b) any summons for the VTL infraction.

PO Germosen and PO Gomez's BWCs (Board Review 03) noted that they were turned on at approximately 8:40 p.m. The videos § 87(2)(b) provided (Board Reviews 01 and 02) did not have any time stamp available. Neither video captured the vehicle in motion.

The investigation determined that while neither PO Germosen and PO Gomez turned on their BWCs at the beginning of the incident, based on § 87(2)(b)'s statement of when the incident occurred, the memo books, and the statements provided, it was credited that the vehicle stop occurred at approximately 8:30 p.m. § 87(2)(b) did not witness whether § 87(2)(b) turned left without signaling. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Billy Gomez questioned § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Billy Gomez frisked § 87(2)(b)**

**Allegation (E) Abuse of Authority: At § 87(2)(b) Police Officer Billy Gomez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (F) Abuse of Authority: At § 87(2)(b) Police Officer Kelsey Mahne searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that PO Gomez approached the driver side of the stopped vehicle and PO Germosen approached the passenger side. PO Gomez spoke to § 87(2)(b) and asked him if there was anything in the vehicle that should not be. PO Gomez asked § 87(2)(b) to step out of the vehicle and PO Gomez frisked him. § 87(2)(b) stood at the rear of the stopped vehicle. § 87(2)(b) exited the vehicle and approached the rear of the vehicle. PO Germosen remained at the rear of the vehicle with § 87(2)(b) and § 87(2)(b). PO Gomez searched the vehicle. PO Gomez recovered a knife from inside of the center console and marijuana from inside § 87(2)(b)'s purse which was in the front passenger seat. § 87(2)(b) was placed in handcuffs. PO Mahne searched the front driver seat area of the vehicle.

§ 87(2)(b) stated (Board Review 05) that she observed the incident from her second-floor apartment. She did not smell marijuana. § 87(2)(b) did not observe PO Gomez place his hands inside of § 87(2)(b)'s pockets.

PO Gomez and PO Germosen stated (Board Reviews 07 and 08) that as they arrived to stand beside the vehicle, they detected the odor of marijuana. The driver's front window and the passenger's front window were rolled down. Neither PO Gomez nor PO Germosen observes any marijuana or associated paraphernalia from where they were standing. PO Gomez asked § 87(2)(b) whether there was anything inside of the vehicle that should not be, because due to the marijuana odor he was able to ask accusatory questions. PO Gomez informed § 87(2)(b) and § 87(2)(b) that there was an odor of marijuana, but he did not recall what they responded. PO Gomez instructed § 87(2)(b) to step out of the vehicle and he did so without any assistance. § 87(2)(b) turned to face the vehicle

The cellphone video § 87(2)(b) provided (Board Review 01) captured PO Gomez asking § 87(2)(b) whether there was anything inside of his vehicle that should not have been. When PO Gomez frisks § 87(2)(b) he places his hands over his pockets. During the search of the vehicle, PO Gomez removes a knife from the inside of the center console and flips it open twice. § 87(2)(b) is placed in handcuffs. PO Mahne walks to the open driver door and leans into the vehicle. PO Mahne searches the area between the front passenger and driver seats.

At 4:12 minutes into PO Gomez's BWC video (Board Review 03) he is searching a black bag on the passenger seat and pulls out a yellow Ziploc bag from inside. § 87(2)(b) tells PO Gomez that she smokes marijuana.

PO Gomez issued § 87(2)(b) a summons for possession of marijuana and § 87(2)(b) a summons for possession of a knife (Board Review 09).

§ 87(2)(b) denied she was able to smell any odor of marijuana from the second floor. However, due to presence of marijuana recovered from inside of the vehicle, the lack of refuting statements from either § 87(2)(b) or § 87(2)(b) and the summons issued for the marijuana, the investigation credits that there was an odor of marijuana emanating from inside of the vehicle. PO Gomez was the only police officer on scene who asked § 87(2)(b) a pointed question. Since there were no statements which contradicted PO Gomez and § 87(2)(b)'s statements that PO Gomez did not place his hands inside of § 87(2)(b)'s pockets, the investigation weighted the video and determined that PO Gomez frisked § 87(2)(b) and did not search him. PO Gomez and PO Mahne were the only two police officers on scene to search the vehicle.

According to the NYPD Patrol Guide, Section 212-11 (Board Review 10), an officer may ask accusatory or pointed questions of a person when they have a founded suspicion of criminality.

According to New York v. Hollman, 79 N.Y. 2d 181 (Board Review 11), the common-law right of inquiry is a level of contact between officers and civilians which is activated by founded suspicion that criminality is afoot and permits a greater intrusion than a mere request for information. Officers may ask pointed questions which would lead the person to reasonably believe that he or she is suspected of wrongdoing.

According to People v. Burgos, 255 A.D.2d 199 (Board Review 12), where an officer possesses probable cause that a defendant is guilty of a crime, the officer may ask the defendant whether they possess any weapons to ensure his safety.

According to People v. Chestnut, 43 A.D.2d 260 (Board Review 13), an officer may search the occupants of a vehicle where he possesses probable cause that they are guilty of a crime rather than merely a traffic infraction. Where an officer detects the odor of marijuana emanating from a stopped vehicle, he shall possess probable cause to search the vehicle and its occupants.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: At § 87(2)(b) Police Officer Albert Germosen threatened to arrest § 87(2)(b)**

It is undisputed that a knife was recovered from the center console of § 87(2)(b)'s vehicle. PO Gomez made the determination to place § 87(2)(b) in handcuffs and removed him to the 76<sup>th</sup> Precinct stationhouse. At the stationhouse PO Gomez issued § 87(2)(b) a summons for possession of the knife.

At 2:15 minutes into PO Germosen's BWC video (Board Review 03), PO Gomez shows § 87(2)(b) the knife. PO Gomez flicks the knife down and the blade comes out of the sheath. The blade of the knife appears to be approximately the length of PO Gomez's palm. PO Gomez asks § 87(2)(b) why he had the knife, and § 87(2)(b) tells PO Gomez that he does maintenance. § 87(2)(b) shows PO Germosen two pieces of paper which § 87(2)(b) refers to as his "checks," but PO Germosen does not take either. At 10:41 minutes into PO Gomez's BWC video (Board Review 03), PO Gomez tells Lt. James Tomasulo that § 87(2)(b) was in possession of a "gravity knife." At 16:00 minutes into PO Germosen's BWC video, PO Germosen asks § 87(2)(b) whether he wanted to be arrested or issued a "ticket." PO Germosen says, "Relax. You shut up, we'll give you a ticket, you're on your way. You keep on? We're not gonna do that. You're gonna go through the system, so shut up and relax."

§ 87(2)(b) stated (Board Review 04) that the blade of the knife removed from the center console was approximately two inches in length. Neither PO Gomez nor PO Germosen (Board Reviews 07 and 08) were able to recall the length of the knife. PO Gomez stated that the knife was a "switchblade" that when flicked down, the blade extends out and locks into place. PO Gomez did not describe any button or lever that made the blade extend from the sheath. PO Germosen did not recall any details regarding what kind of knife was recovered. PO Gomez stated that § 87(2)(b) informed him he used it for cutting boxes at work. PO Germosen stated the § 87(2)(b) explained he used the knife for work, but he did not recall what kind of work he did. § 87(2)(b) heard § 87(2)(b) inform PO Gomez and PO Germosen that he worked in maintenance.

PO Gomez and PO Germosen stated (Board Reviews 07 and 08) that at the vehicle stop location, PO Gomez determined § 87(2)(b) was under arrest due to the knife which he had in his vehicle. § 87(2)(b) was placed in the patrol vehicle and removed to the 76<sup>th</sup> Precinct stationhouse. While in the patrol vehicle, PO Germosen told § 87(2)(b) that there was the possibility that he could be released at the stationhouse with a desk appearance ticket.

The 76<sup>th</sup> Precinct command log (Board Review 14) noted § 87(2)(b) was brought in with the charges of a criminal possession of a weapon. The summons issued noted that § 87(2)(b) was in violation of NYC Administrative Code section "133," subsection "03."

No property vouchers were associated with either § 87(2)(b) or § 87(2)(b) (Board Review 15).

§ 87(2)(b) was placed in handcuffs and summonsed for the possession of the knife. While PO Gomez in his CCRB statement called the knife recovered a “switchblade,” his description was that of a knife that opens with a rapid movement from the hand. PO Gomez did not mention any button or lever mechanism to open the knife. PO Gomez on his BWC told Lt. Tomasulo, who arrived later on scene, that § 87(2)(b) was found in possession of a “gravity knife.” § 87(2)(b) stated that the blade was approximately two inches, but the BWC showed a blade that appears larger than what § 87(2)(b) described but the investigation was not able to accurately determine the length of the blade from the video. While § 87(2)(b) did not provide a statement, based on the statements obtained from § 87(2)(b) and the police officers in addition to the BWC videos, it was determined that § 87(2)(b) did work in the maintenance industry.

According to NYC Administrative Code 10-133 (Board Review 16), it shall be unlawful for any person to have in such person's possession in any public places, streets and parks of any knife which has a blade length of four inches or more, except for when being transported to or from a place where it is used for any employment, trade or occupation customarily requiring the use of such knife.

According to NY Penal Law Section 265.01 (Board Review 17), a person is guilty of criminal possession of a weapon in the fourth degree when in possession of any switchblade knife or gravity knife, but on May 30, 2019, Assembly Bill 5944 (Board Review 18) removed the term “gravity knife” from the Penal Law while leaving intact law enforcement’s ability to pursue those who otherwise use the knives unlawfully.

According to NYPD Patrol Guide, Section 209-01 (Board Review 19), a uniformed member of the service is authorized to issue a summons/notice of violation instead of arresting the violator.

The investigation weighed the statements obtained along with the BWC videos against NY penal law and NYC administrative codes to determine whether § 87(2)(b) could have been arrested for his possession of the knife. The issue at hand in determining whether § 87(2)(b) could have been arrested is dependent on whether the knife was a switchblade or a gravity knife.

Since § 87(2)(b) did not provide a statement to the investigation and there was no property voucher obtained, the investigation weighed the BWC videos against PO Gomez’s description of the knife. In his statement to the CCRB, PO Gomez called the knife a “switchblade” but provided a description of a knife that is opened when using a downward motion, such as a gravity knife. PO Gomez did not provide any details that would indicate that the knife had a lever or button that would extend the blade out of the sheath, such as a switchblade. In his BWC video, PO Gomez is captured stating that the knife recovered is a “gravity knife.” In PO Germosen’s BWC video, PO Gomez is captured moving his hand down rapidly to open the knife. PO Gomez was successful in opening the knife using this downward movement, but the BWC video does not capture in detail the knife. The investigation determined that due to PO Gomez’s description of the knife, his hand movement in the BWC video, and his statement to Lt. Tomasulo that the knife on scene was a “gravity knife,” the knife that § 87(2)(b) had matched the description of a gravity knife and was not a switchblade. According to the signed bill in effect since May 2019, the possession of a gravity knife alone is not a violation. The investigation is crediting that § 87(2)(b) used the knife for work and he had finished working earlier that day based on the statements captured in the BWC in addition to showing PO Gomez and PO Germosen both his work uniform and his paychecks. All the statements and videos corroborate that the knife was found inside of a closed center console.

It was concluded that § 87(2)(b) was in possession of a legal gravity knife. PO Germosen threatened § 87(2)(b) that if he was not quiet, he would be arrested for the violation of the knife.

§ 87(2)(g)

**Allegation (H) Discourtesy: At the 76th Precinct stationhouse, Police Officer Albert Germosen spoke discourteously to § 87(2)(b)**

At the 76<sup>th</sup> Precinct stationhouse, PO Germosen walked § 87(2)(b) into the holding cell area. § 87(2)(b) told PO Germosen that he needed to make a telephone call to his wife. PO Germosen told § 87(2)(b) that he could make a phone call once he was inside of the cell. § 87(2)(b) repeated that he needed to call his wife. PO Germosen used the word “fucking” when informing § 87(2)(b) that phone calls are made inside of the holding cell.

At 18:54 minutes into PO Germosen’s BWC video (Board Review 03), § 87(2)(b) tells PO Germosen he needs to call his wife multiple times. PO Germosen tells § 87(2)(b) to stop talking. PO Germosen informs § 87(2)(b) that he will be placed in a holding cell and § 87(2)(b) said “No, no, no, no...” PO Germosen said, “My man, you don’t make a phone call standing here. You make a fucking phone call in there and I pass you the phone.”

PO Germosen stated (Board Review 08) that his use of profanity was not directed at § 87(2)(b) and he did not believe § 87(2)(b) took offense to the use of the discourteous word. PO Germosen did not have a specific reason as to why he used the word “fucking” while speaking to § 87(2)(b).

According to the NYPD Patrol Guide, Section 200-02 (Board Review 20), the NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)



§ 87(2)(g), § 87(4-b)

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### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 22).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 23).
- § 87(2)(b)

[illegible]

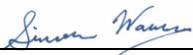
- PO Gomez has been a member-of-service for 11 years and has been a subject in five prior CCRB complaints and seven allegations, of which one was substantiated:
  - 201810590 involved a substantiated allegation of failure to provide RTKA card against PO Gomez. The Board recommended formalized training and the NYPD imposed training.
- PO Germosen has been a member-of-service for four years and has one prior CCRB complaint with one allegation, none of which were substantiated. § 87(2)(g)
- PO Mahne has been a member-of-service for five years and this is the first CCRB complaint to which she has been a subject.

## Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- As of January 11, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 28).

Squad No.: 15

Investigator:	<u>Valentina Concha-Toro</u>	<u>Inv. Valentina Concha-Toro</u>	<u>February 24, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>02/25/22</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date